



# **CITY OF HAYWARD**

## **AGENDA REPORT**

AGENDA DATE 10/02/01

AGENDA ITEM 3

WORK SESSION ITEM       

**TO:** Mayor and City Council

**FROM:** Finance and Internal Services Director

**SUBJECT:** Introduction of an Ordinance Governing the Establishment of Community Facilities Districts

### **RECOMMENDATION:**

It is recommended that Council introduce the attached ordinance with respect to the formation of Community Facilities Districts.

### **BACKGROUND:**

In September of 1999 Council approved a Development Agreement for the property located south of Route 92. The Development Agreement includes a provision, which allows the City to consider establishing a Community Facilities District (CFD) to finance public improvements associated with the project. Duc Housing Partners, Inc. has submitted a request to form a CFD. At this point staff is not requesting that a community facilities district be formed. Before staff can make such a recommendation to Council substantial analysis must be done to ascertain that a community facilities district is viable. To begin the process of evaluation and to provide a framework by which to evaluate such a request, staff is recommending that Council introduce the attached draft ordinance.

Community facilities districts are formed under the Mello-Roos Community Facilities Act of 1982. The Act provides that cities, counties and special districts may form a "community facilities district", over specifically defined areas within their jurisdiction. Once established the community facilities district becomes an entity through which the local government is authorized to levy special taxes and issue bonds if authorized by a two-thirds vote of the qualified electors of such a district. Such districts offer considerable flexibility in terms of the type of improvements that can be financed, how parcels may be benefited by the improvements, tax structure and district composition. In this instance where the improvements generally benefit all of the parcels in the district a community facilities district is an efficient and effective financing mechanism. The parcels in the district become the ultimate security for any debt issued and a special tax is levied each year to pay the annual debt service.

The attached draft ordinance covers such areas as general goals, eligible public facilities, disclosure requirements and the use of consultants. In addition, there are several sections dealing with financial aspects of community facilities district. Because these sections deal directly with the financial viability of a proposed district they are discussed briefly on the next page.

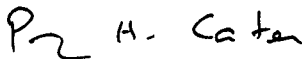
Credit Quality—Requirements for CFD Bond Issues. The ordinance calls for all CFD bond issues to have at least a three to one property value to public lien ratio. This ratio is based on the value of the district after the planned improvements are in place. Property value may be established by an appraisal or be based on assessed values as indicated on the county assessor's tax roll. The will select the appraiser and the appraisal will be based on standards promulgated by the State and as otherwise determined applicable by City staff. There are several other requirements under this section, which are designed to ensure financial capability for the proposed CFD.

Special Tax Formulas and Maximum Special Taxes. A special tax is levied on the parcel holders in a CFD to pay the annual debt service for any bonds that are issued. The tax level must provide 110 percent debt service coverage. In addition, the tax level must be sufficient to pay reasonable and necessary annual administrative expenses. Also, the tax formula must be reasonable and equitable. The development of the tax formula or method is the responsibility of the special tax consultant, one of the consultants that must be engaged to form a CFD.

Absorption Study. The ordinance establishes that an absorption study of any proposed development project is required for land secured financings. An absorption study evaluates the rate at which the project will be developed. This information is critical to the decision as to whether or not a CFD is the appropriate financing approach for the project.


As discussed earlier, adoption of the attached ordinance does not commit the City Council to the formation of a CFD in the future. However, establishing a policy does meet one of the requirements for the formation of a CFD should Council elect to do so. Also, adoption of a policy at this time provides guidelines by which Council can begin consideration of the request by Duc Housing Partners to form a CFD in connection with the development of the Oliver East property. Staff anticipates returning to the Council in the near future with a request to retain outside consultants to evaluate the request to form a CFD. Following this analysis, staff will present a recommendation with regard to the viability of forming a CFD involving the Oliver East property.

Recommended by:



Perry H. Carter, Finance & Internal Services Director

Approved by:

  
Jesús Armas, City Manager

Attachment: Draft Ordinance

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE ADDING ARTICLE 17 TO CHAPTER 8 OF THE  
HAYWARD MUNICIPAL CODE RELATING TO ADOPTING LOCAL  
GOALS AND POLICIES FOR THE ESTABLISHMENT OF COMMUNITY  
FACILITIES DISTRICTS

THE CITY COUNCIL OF THE CITY OF HAYWARD DOES ORDAIN AS FOLLOWS:

Section 1: Article 17 of Chapter 8 is hereby added to the Hayward Municipal Code as follows:

ARTICLE 17

LOCAL GOALS AND POLICIES FOR  
COMMUNITY FACILITIES DISTRICTS

**Section 8-17.00 INTRODUCTION.** Section 53312.7(a) of the California Government Code requires that prior to the initiation of proceedings pursuant to the Mello-Roos Community Facilities Act of 1982 (the "Act") the City of Hayward (the "City") consider and adopt local goals and policies concerning the use of the Act prior to the initiation of proceedings on or after January 1, 1994 to establish a new community facilities district ("CFD") under the Act. The following goals and policies are intended to meet the minimum requirements of the Act, and may be amended or supplemented by resolution of the City Council at any time.

**Section 8-17.01 GOALS.**

Except as otherwise provided, only those public improvements that benefit not only the particular development, but also the City at large will be considered for financing. Such improvements include, but are not limited to, trunk water, sanitary and storm sewer and related facilities, bridges, major collector or "spine" streets, including related landscaping and lighting, parks, trails, and other recreational facilities, community centers, and fire stations. Unless specifically approved by the Council, whether through its approval of a development agreement or otherwise, in-tract utilities, streets, landscaping and lighting serving individual properties will not be financed in new development, nor will the acquisition of rights-of-way, lands and easements for public improvements for new development be financed.

School facilities will not be financed except under appropriate joint community facilities agreements with, or joint exercise of powers agreements created between the City and, school districts.

The City shall make the determination as to whether a proposed district shall proceed under the provisions of the California assessment laws or the Act. The City may confer with consultants and the applicant to learn of any unique CFD requirements such as facilities serving the regional area prior to making any final determination.

All City and consultant costs incurred in the evaluation of new CFD applications and the establishment of CFDs will be paid by the applicant(s) by advance deposit increments. The City shall not incur any non-reimbursable expense for processing CFDs. Expenses not chargeable to the CFD shall be borne by the applicant.

**Section 8-17.02. ELIGIBLE PUBLIC FACILITIES AND SERVICES.** The improvements eligible to be financed by a CFD must be owned by a public agency or public utility, and must have a useful life of at least five (5) years, except that up to five percent of the proceeds of an issue may be used for facilities owned and operated by a privately-owned public utility. The development or redevelopment proposed within a CFD must be consistent with the City's general plan and must have received any required legislative approvals such as zoning or specific plan approvals prior to the issuance of public debt. A CFD shall not vest any rights to future land use on any properties, including those which are responsible for paying special taxes.

The list of eligible public facilities include, but are not limited to, the types of facilities specified in Government Code section 53313, as it currently exists, or may hereafter be amended.

The funding of public facilities to be owned and operated by public agencies other than the City shall be considered on a case-by-case basis. If the proposed financing is consistent with a public facilities financing plan approved by the City, or the proposed facilities are otherwise consistent with approved land use plans for the property, the City shall consider entering into a joint financing agreement or joint powers authority in order to finance these facilities.

The City will consider on a case-by-case basis CFDs established for the provisions of services eligible to be funded under the Act. Eligible services are as specified in the Act.

**Section 8-17.03 PRIORITIES FOR CFD FINANCING UNDER THE ACT.** Priority for CFD financing shall be given to public facilities which: (a) are necessary for economic development, or (b) are otherwise incident to an economic development project. If appropriate, the City shall prepare a public facilities financing plan as a part of the specific plan or other land use document that identifies the public facilities required to serve a project, and the type of financing to be utilized for each facility.

**Section 8-17.04 CREDIT QUALITY REQUIREMENTS FOR CFD BOND ISSUES.**

All CFD bond issues should have at least a three to one property value to public lien ratio per land use category, including any overlapping special assessment or special tax liens, after calculating the value of the financed public improvements to be installed. Property value may be based on either an appraisal or on assessed values as indicated on the county assessor's tax roll. The appraiser shall be selected by the City, and the appraisal shall be based on standards promulgated by the State of California and otherwise determined applicable by City staff and consultants. The appraisal must be dated within nine months of the date the bonds are issued. The public lien amount shall include the bond issue currently being sold plus any public indebtedness secured by a lien on real property currently existing against the properties to be taxed.

Less than a three to one property value to public lien ratio, excessive tax delinquencies, or projects of poor economic viability may cause the City to disallow the sale of bonds or require credit enhancement prior to bond sale. The City may consider exceptions to the above policies for bond issues that do not represent an unusual credit risk, either due to credit enhancement or other reasons specified by the City, and which otherwise provide extraordinary public benefits.

If the City requires letters of credit or other security, the credit enhancement shall be issued by an institution, in a form and upon terms and conditions satisfactory to the City. Any security required to be provided by the applicant may be discharged by the City upon the opinion of a qualified appraiser, retained by the City, that a value-to-lien ratio of three to one has been attained per land use category, including any overlapping special assessment or special tax liens.

As an alternative to providing other security, the applicant may request that a portion of the bond proceeds be placed in escrow with a corporate agent in an amount sufficient to assure a value-to-lien ratio of at least three to one on the outstanding proceeds. The proceeds shall be released at such times and such amounts as may be necessary to assure a value-to-lien ratio of at least three to one per land use category, including any overlapping special assessment or special tax liens, on the aggregate outstanding bond proceeds.

**Section 8-17.05 DISCLOSURE REQUIREMENTS FOR PROSPECTIVE PROPERTY PURCHASERS.**

A. Disclosure Requirements for Developers. Developers who are selling lots or parcels that are within a CFD shall provide disclosure notice to prospective purchasers that complies with all of the requirements set forth in Section 53341.5 of the Government Code. The disclosure notice must be provided to prospective purchasers of property at or prior to the time the contract or deposit receipt for the purchase of property is executed. Developers shall keep an executed copy of each disclosure document as evidence that disclosure has been provided to all purchasers of property within a CFD.

B. Disclosure Requirements for the Resale of Lots. The City Finance Department shall provide a notice of special taxes to sellers of property (other than developers) which will enable them to comply with their notice requirements under Section 1102.6 of the Civil Code. This notice shall be provided by the City within five working days of receiving a written request for

the notice. A reasonable fee may be charged for providing the notice, not to exceed any maximum fee specified in the Act.

**Section 8-17.06 EQUITY OF SPECIAL TAX FORMULAS AND MAXIMUM SPECIAL TAXES.** Special tax formulas for CFDs shall provide for minimum special tax levels which satisfy the following expenses of a CFD: (a) 110 percent debt service coverage for all CFD bonded indebtedness, (b) the reasonable and necessary annual administrative expenses of the CFD, and (c) amounts equal to the differences between expected earnings on any escrow fund and the interest payments due on bonds of the CFD. Additionally, the special tax formula may provide for the following: (a) any amounts required to establish or replenish any reserve fund established in association with the indebtedness of the CFD, (b) the accumulation of funds reasonably required for future debt service, (c) amounts equal to projected delinquencies of special tax payments, (d) the costs of remarketing, credit enhancement and liquidity facility fees, (e) the cost of acquisition, construction, furnishing or equipping of facilities, (f) lease payments for existing or future facilities, (g) costs associated with the release of funds from an escrow account, and (h) any other costs or payments permitted by law. In structuring the special tax, projected annual interest earnings on bond reserve funds may not be included as revenue for purposes of the calculation.

The special tax formula shall be reasonable and equitable in allocating public facilities' costs to parcels within the CFD. Exemptions from the special tax may be given to parcels which are publicly owned, are held by a property owners' association, are used for a public purpose such as open space or wetlands, are affected by public utility easements making impractical their utilization for other than the purposes set forth in the easements, or have insufficient value to support bonded indebtedness.

The total projected property tax levels for any CFD shall not exceed any maximum specified in the Act (the residential property criteria limits the total of all taxes and assessments to 2% of assessed value). The annual increase, if any, in the maximum special tax for any parcel shall not exceed any maximum specified in the Act. The increase in the special tax levied on any parcel as a consequence of delinquency or default by the owner of any other parcel shall not exceed any maximum specified in the Act.

Special taxes will only be levied on an entire County Assessor's parcel, and any allocation of special tax liability of a County Assessor's parcel to leasehold or possessory interest in the fee ownership of such County Assessor's parcel shall be the responsibility of the fee owner of such parcel (except where the City is the fee owner of the parcel and has leased the parcel pursuant to a lease with a term of at least 5 years, in which case the lessee shall have the responsibility for the special tax liability) and the City shall have no responsibility therefore and has no interest therein. Failure to pay or cause to be paid any special taxes in full when due, shall subject the entire parcel to foreclosure in accordance with the Act.

The City shall retain a special tax consultant to prepare a report which: (a) recommends a special tax for the proposed CFD, and (b) evaluates the special tax proposed to determine its ability to adequately fund identified public facilities, City administrative costs, services (if applicable) and other related expenditures. Such analysis shall also address the resulting aggregate

tax burden of all proposed special taxes plus existing special taxes, ad valorem taxes and assessments on the properties within the CFD.

**Section 8-17.07 APPRAISALS.** The definitions, standards and assumptions to be used for appraisals shall be determined by City on a case-by-case basis, with input from City consultants and CFD applicants, and by reference to relevant materials and information promulgated by the State of California, including the Appraisal Standards for Land-Secured Financings prepared by the California Debt and Investment Advisory Commission. In any event, the value-to-lien ratio shall be determined based upon an appraisal by an independent Member Appraisal Institute ("M.A.I.") appraiser of the proposed CFD. The appraisal shall be coordinated by and under the direction of the City. All costs associated with the preparation of the appraisal report shall be paid by the entity requesting the establishment of the CFD through the advance deposit mechanism.

**Section 8-17.08 ABSORPTION STUDY.** An absorption study of any proposed development project shall be required for land secured financing. The absorption study shall be used A) as basis for verification that sufficient revenues can be produced; and B) to determine if the public financing of the public facilities is appropriate given the timing of the development. Additionally, the projected absorption rates will be provided to the appraiser for use in the appraisal required in Section V, above.

**Section 8-17.09 TERMS AND CONDITIONS OF BONDS.** All terms and conditions of the bonds shall be established by the City. The City will control, manage and invest all CFD issued bond proceeds. Each bond issue shall be structured to adequately protect bond owners and to not negatively impact the bonding capacity or rating of the City. These security measures could include a combination of credit enhancement, foreclosure covenant, special reserve fund or deposits and/or a contractual commitment by the proponents and successors to pay the special taxes or assessments during the initial development stages of the development project. The City has the sole discretion to determine the types of credit enhancement, foreclosure covenant and reserve fund that may be required.

All statements and material related to the sale of bonds shall emphasize and state that neither the faith, credit nor the taxing power of the City is pledged to security or repayment of the Bonds. The sole source of pledged revenues to repay CFD bonds are special taxes, bond proceeds and reserve funds held under the bond document, and the proceeds of foreclosure proceedings and additional security instruments provided at the time of bond issuance.

The City is under no obligation to issue tax-exempt debt. The ability to issue tax-exempt debt depends upon the particular facts and circumstances of each CFD. If the City, in its sole discretion determines to issue tax-exempt debt, the developer must agree to cooperate in connection with any covenants or other requirements of state and/or federal tax law that may be necessary in order for the City to issue tax-exempt debt.

**Section 8-17.10 CFD COST DEPOSITS AND REIMBURSEMENTS.** All City and consultant costs incurred in the evaluation of CFD applications and the establishment of CFDs will be paid by the entity requesting the establishment of the CFD by advance deposit increments. The amount of the initial advance deposit shall be determined by the City. The City shall not incur any non-reimbursable expenses for processing and administering CFDs. Expenses not chargeable to the CFD shall be directly borne by the applicant.

Each petition for formation of a CFD shall be accompanied by the initial deposit in the amount determined by the City to fund initial staff and consultant costs associated with CFD review and implementation. If additional funds are needed to off-set costs and expenses incurred by the City, the City shall make written demand upon the applicant for such funds. If the applicant fails to make any deposit of additional funds for the proceedings, the City may suspend all proceedings until receipt of such additional deposit.

The City shall not accrue or pay any interest on any portion of the deposit refunded to the applicant or the costs and expenses reimbursed to the applicant. Neither the City nor the CFD shall be required to reimburse the applicant or property owner from any funds other than the proceeds of bonds issued by the CFD.

**Section 8-17.11 CONTINUING DISCLOSURE.** Landowners owning land within any CFD, and which are responsible for ten percent (10%) or more in the aggregate of the special taxes or assessments, must agree to provide A) initial financial disclosure at the time of issuance of any bonds relating to such CFD; and B) annual financial disclosure as required under Rule 15c2-12 of the Securities Exchange Commission until the time at which the aggregate special tax of such landowner is less than 10%.

**Section 8-17.12 USE OF CONSULTANTS.** The City shall select all consultants necessary for the formation of the CFD and the issuance of bonds, including the underwriter(s), bond counsel, financial advisors, appraiser, absorption consultant, and the special tax consultant. Prior consent of the applicant shall not be required in the determination by the City of the consulting and financing team.

**Section 8-17.13 EXCEPTIONS TO THESE POLICIES.** The City may find in limited and exceptional instances that a waiver to any of the above stated policies is reasonable given identified special City benefits to be derived from such waiver. Such waivers only will be granted by action of the City Council.

**Section 2.** In the event that any section of this Ordinance is found to be invalid, unconstitutional or unlawful, such invalid section shall be severed for the ordinance and the remaining sections shall remain in full force and effect.

**Section 3.** Effective date. Pursuant to Section 620 of the City Charter, this Ordinance shall become effective thirty days after the date of its adoption.



INTRODUCED at a regular meeting of the City Council of the City of Hayward, held the \_\_\_\_ day of \_\_\_\_\_, 2001 by Council Member \_\_\_\_\_ .

ADOPTED at a regular meeting of the City Council of the City of Hayward held the \_\_\_\_ day of \_\_\_\_\_, 2001, by the following votes of members of said City Council.

AYES:

NOES:

ABSTAIN:

ABSENT:

APPROVED: \_\_\_\_\_

BY: \_\_\_\_\_  
Mayor of the City of Hayward

ATTEST: \_\_\_\_\_  
City Clerk of the City of Hayward

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney of the City of Hayward